IN THE HIGH COURT OF JUDICATURE,

ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

TUESDAY, THE FIFTH DAY OF JULY
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE J.CHELAMESWAR

and
THE HON'BLE MR JUSTICE M.VENKATESWARA REDDY

WRIT PETITION NO : 8663 of 2005

Between:

1. V.Varadarajulu, S/o.B.Venkateshwarlu, O/O District Medical and Health Officer, Chittoor.

2. Md. Navas Khan S/o.P.Sharmas Khan, O/o.DM &HO, Kurnool.

..... PETITIONERS

AND

1. M.M.H.Prameela Devi, W/o.K.Rajabhushanam, O/O.Regional Training Centre (Female)Kurnool.

2. K.Nirmala Devi, W/o.Leeladhar Prasad, O/O.S.V.R.R.C.G.Hospital, Department of chest Disease, . Tirupathi, Chittoor District.

3. Government of A.P. rep. by its Principal Secretary health, Medical and Family Welfare (D2) Department, Secretariat, Saifabad, Hyderabad.

4. Government of A.P. rep. by its Ex.Officio Secretary, Health, Medical and Family Welfare Department, Saifabad, Hyderabad.

5. The Director of Health, A.P.Hyderabad.

6. The Commissioner of Family Welfare A.P.Hyderabad.

7. The Regional Director of Medical and Health Services, Zone Cuddapah.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue a writ order or direction more in the nature of writ of Certiorari calling for the records relating to the order of the Hon'ble A.P. Administrative Tribunal dt.10.9.2004 in VMA No.556 of 2004 in O.A.No.8160 of 2003 and quash the same in so far as the word relating to any promotions made occurring in Paragraph 8 and add any promotions to be made in future in place of any promotions made and to pass such other order or orders.

Counsel for the Petitioners: MR.J.R.MANOHAR RAO.

Counsel for the Respondents: GP FOR MEDICAL HEALTH & FAMI.WELFARE.

The Court at the stage of admission made the following :

THE HON'BLE SRI JUSTICE J.CHELAMESWAR

AND

THE HON'BLE SRI JUSTICE M.VENKATESWARA REDDY

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WRIT PETITION NO.8663 OF 2005

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ORAL ORDER:

(Per the Hon'ble Sri Justice J.Chelameswar)

This writ petition is filed with the prayer as follows:

> "For the reasons stated in the accompanying affidavit it is prayed that this Hon'ble Court may be pleased to issue a writ order or direction more in the nature of Writ of Certiorari calling for the records relating to the order of the Hon'ble A.P. Administrative Tribunal dt.10.9.2004 in VMA No.556 of 2004 in O.A.No.8160 of 2003 and quash the same in so far as the word relating to "any promotions made occurring in paragraph 8 and add any promotions to be made in future in place of any promotions made and to pass such other order or orders as this Hon'ble Court may deem fit and proper in the circumstances of the case."

The matter arises out of an interlocutory order made by the A.P. Administrative Tribunal as can be seen from the prayer. The petitioners herein are the respondents in O.A.No.8160 of 2003. O.A. was filed challenging G.O. Ms. Nos. 641, dated 06-11-1003 and 381, dated 21-07-1998, by which certain amendments are made to the Rules issued earlier in G.O.Ms.Nos.285, dated 12-04-1978 and 675, dated 28-05-1980. Along with the O.A., the applicants sought stay of the operation of the above mentioned G.O. Ms. Nos. 641, dated 06-11-1003 and 381, dated 21-07-1998 and consequential proceedings of the 10th respondent therein, dated 21-06-2004. Initially interim orders were granted directing the respondents in the O.A., to maintain status quo in respect of operation of the orders issued in G.O.Ms.No.641, Health, Medical and Family Welfare (D2) Department, dated 06-11-2003. Subsequently, the petitioners herein filed V.M.A.No.556 of 2004, seeking vacation of the interim order granted earlier. The Tribunal by its order dated 10th September 2004 disposed of the said V.M.A. along with another connected V.M.A. The operative portion of the said order reads as follows:

> "As the rules issued in G.O.Ms.No.641, Health, Medical and Family Welfare Department, dated 6-11-2003 were not given any retrospective effect, any vacancies in the category of Deputy District Extension and Media Officers available prior to coming into force of G.O.Ms.No.641, Health, Medical and Family Welfare Department, dated 6-11-2003 may be filled up by following the rules which were in force prior to the amendment issued through G.O.Ms.No.641, Health, Medical and Family Welfare Department dated 6-11-2003. Any promotions made in the vacancies that have arisen subsequent to coming into force of the amendments issued to the rules through G.O.Ms.No.641, Health, Medical and Family Welfare Department dated 6-11-2003 would be subject to the result of the O.As. The VMAs are disposed of accordingly."

Writ petitioners, who are obviously interested in the implementation of the amended Rules, which are under challenge in the O.A., because they believe that under the amended Rules they would have better prospects of promotion, requested the respondent-authorities of the Government of Andhra Pradesh that in view of the fact that the *status quo* orders granted earlier by the Tribunal were in subsistence, their cases could not be considered for promotion and, since the same are modified now, their cases may be considered for promotions.

However, the 6th respondent herein Commissioner of Family Welfare, Hyderabad Sri C.B.S.Venkata Ramana found some difficulty in understanding the order of the Tribunal, the operative portion of which is already extracted earlier. According to the said officer, the order is not specific. He therefore, instructed all the Regional Directors of Medical and Health Services in the State, not to take up any promotions till further clarification is given. A copy of the said Proceeding dated 28-09-2004 is filed along with the writ petition. The relevant portion of which reads as follows:

> " The Orders issued by A.P.A.T. in V.M.A. 555/04 in O.A.No.4294/04 dated 29-7-04 and V.M.A.No.556/04 in O.A.No.8160/03, dated 10-09-04 are not specific. Hence, the matter has been referred to Govt. Pleader, A.P.A.T. for a clarification in the matter as to whether the Status-quo issued by the A.P.A.T. effectively stands vacated with the above order. Reply is awaited in the matter.
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> All the Regional Director of Medical and Health Services in the State are requested not to take up any promotion for filling up the vacant posts of Dy. DEMOs or counseling as per G.O.Ms.No.641, HM&FW (D2) dated 6-11-2003, till further clarification from this Office, which will be given after receipt of Government Pleader Opinion."

Apart from that he also addressed a letter to the learned Government Pleader for Medical & Health (Services), A.P. Administrative Tribunal, requesting the Government Pleader to consider filing of miscellaneous petition on behalf of the department for a clarification. The said letter insofar as it is relevant for the present purpose reads as follows:

> "I am to inform that Govt. have amended the recruitment rules for the post of Dy. DEMO vide G.O.Ms.No.641 HM&FW (D2) Dept., dt.6.11.2003 making Health Educator is the only feeder category in lieu all other categories existed earlier. The effected parties approached the Hon'ble APAT questioning the G.O. When the matter stands thus the APAT ordered statusquo.
>
> The unofficial respondents filed V.M.As seeking vacation of statusquo orders. The Hon'ble APAT issued further orders on 10.9.2004 which are not specifically mentioned as to whether the statusquo ordered by APAT earlier effectively stands vacated by this order. You are kind enough to clarify the position in the reference cited.
>
> In this connection, it is to submit that the Hon'ble Tribunal order is not clear as regarding: "Any promotions made in the vacancies that have arisen subsequent to coming into force of the amendments issued to the rules through G.O.Ms.No.641, Health, Medical and Family Welfare Department, dated 06.11.2003 would be subject to the result of the O.As." i.e. whether "made" means "promotions already made in the past", or "made from time to time, even after the passing of the order in this O.A on 10.09.2004 and as to whether this order effectively vacates the status-quo.
>
> Till now no promotions have been given as per the amendment issued in G.O.Ms.No. 641 HM&FW (D2), dt.6.11.2003. But at a later date, if APAT orders cancellation of G.O., then the individuals to be promoted may approach court and which will create further legal problems.
>
> I therefore request you to consider for filing a M.A., on behalf of the department for clarification in respect of the above points and for early hearing of all pending O.As. on the above subject and issue of a final judgment in the matter by A.P. Administrative Tribunal."

When the matter was taken up earlier on 28-06-2005, the learned Government Pleader appearing for the respondents expressed his inability to proceed with the matter in view of the stand taken by the 6th respondent, more particularly, as evidenced by the two letters referred to earlier. We therefore, thought it fit to direct the officer concerned to be present in the Court for the reasons recorded by us in the order dated 28-06-2005. Accordingly, the officer appeared before this Court on 30-06-2005 and it seems that he appears to be troubled more with grammar than law. According to him, the order of the Tribunal dated 10-09-2004, (relevant portion of which was extracted supra) is not very clear and the last sentence of the order is capable of being interpreted in two ways as pointed by him in Paragraph No.3 of his letter dated 30-09-2004 addressed to the Government Pleader, Medical & Health

(Services), A.P. Administrative Tribunal.

It is an unfortunate situation that an officer of the rank of Commissioner, working with the State of Andhra Pradesh, entertains such a doubt with regard to the order of the Tribunal. Irrespective of the fact that whether that portion of the order, which is extracted earlier, can give rise to two interpretations or not, which perhaps calls for a very critical examination by a grammarian, we are of the opinion that even in the absence of the observation of the Tribunal as it made in the last sentence of its order viz., *"Any promotions made in the vacancies that have arisen subsequent to coming into force of the amendments issued to the rules through G.O.Ms.No.641, Health, Medical and Family Welfare Department dated 6-11-2003 would be subject to the result of the O.As."*, it goes without saying that any decision of the parties to a litigation, taken during the pendency of the litigation, affecting the rights and obligations of the parties to the litigation, would be subject to the result of the litigation, barring certain well recognized exceptions like the alteration of the rights and obligations by a constitutionally valid legislative exercise. If that is the well settled principle of law, the doubt entertained by the 6th respondent, in our view, is absolutely baseless, if not mischievous. We certainly do not expect an officer, who has put in 23 years of service in the administration (we are informed so by the officer concerned, who was present in the Court) to entertain such a frivolous doubt. We deprecate the attitude of the 6th respondent.

We declare that any promotions made during the pendency of the O.As. in the context of the litigation, whether they are made before or after 10-09-2004, but during the pendency of the O.As., would be subject to the result of the O.As.

Accordingly, the writ petition is disposed of with the above observations, at the stage of admission. In view of the circumstances, there shall be no order as to costs.

Registry is directed to communicate a copy of this order to the Chief Secretary, Government of Andhra Pradesh, Hyderabad.

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J.Chelameswar, J

M.Venkateswara Reddy, J

Note:

Issue copy in three days.

(bo)

mrk

5th July 2005.

To

1. The Principal Secretary health, Medical and Family Welfare (D2) Department, Government of A.P., Secretariat, Saifabad, Hyderabad.
2. The Ex.Officio Secretary, Health, Medical and Family Welfare Department, Government of A.P., Saifabad, Hyderabad.
3. The Director of Health, A.P., Hyderabad.
4. The Commissioner of Family Welfare, A.P., Hyderabad.
5. The Regional Director of Medical and Health Services, Zone Cuddapah.
6. The Chief Secretary, Government of Andhra Pradesh, Hyderabad.
7. Two CCs to the G.P. for Medical, Health and Family Welfare, High Court of A.P., Hyderabad (OUT).
8. Two CD copies.

*Form-NIC-OGS/WP{**MPL**}*